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HOUSE BILL 32

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Mimi Stewart

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

**RELATING TO ENERGY CONSERVATION; ENACTING THE ENERGY EFFICIENCY
AND RENEWABLE ENERGY BONDING ACT; PROVIDING PROCEDURES FOR
INSTALLING ENERGY EFFICIENCY MEASURES IN STATE AND SCHOOL
DISTRICT BUILDINGS; AUTHORIZING THE ISSUANCE OF ENERGY
EFFICIENCY BONDS.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 10 of this act may be cited as the "Energy Efficiency
and Renewable Energy Bonding Act".**

**Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
Energy Efficiency and Renewable Energy Bonding Act:**

**A. "authority" means the New Mexico finance
authority;**

B. "bonds" means energy efficiency bonds;

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1 C. "department" means the energy, minerals and
2 natural resources department;

3 D. "energy efficiency measure" means a modification
4 or improvement to a building or complex of buildings that is
5 designed to reduce energy consumption or operating costs or
6 that provides a renewable energy source and may include:

7 (1) insulation of the building structure or
8 systems within the building;

9 (2) storm windows or doors, caulking or
10 weatherstripping, multiglazed windows or doors, heat-absorbing
11 or heat-reflective glazed and coated window or door systems,
12 additional glazing, reductions in glass area or other window
13 and door system modifications that reduce energy consumption;

14 (3) automated or computerized energy control
15 systems;

16 (4) heating, ventilating or air conditioning
17 system modifications or replacements;

18 (5) replacement or modification of lighting
19 fixtures to increase the energy efficiency of the lighting
20 system;

21 (6) energy recovery systems;

22 (7) on-site photovoltaics, solar heating and
23 cooling systems or other renewable energy systems; or

24 (8) cogeneration or combined heat and power
25 systems that produce steam, chilled water or forms of energy

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1 such as heat, as well as electricity, for use primarily within
2 a building or complex of buildings;

3 E. "fund" means the energy efficiency and renewable
4 energy bonding fund;

5 F. "school district" means a political subdivision
6 of the state established for the administration of public
7 schools, segregated geographically for taxation and bonding
8 purposes and governed by the Public School Code;

9 G. "school district building" means a building, the
10 title to which is held by a school district; and

11 H. "state building" means a building, the title to
12 which is held by the state or an agency of the state.

13 Section 3. [NEW MATERIAL] STATE PLAN FOR ENERGY
14 EFFICIENCY MEASURES. --

15 A. The department shall develop a state plan for
16 the installation, no later than the end of fiscal year 2010, of
17 energy efficiency measures in state buildings and school
18 district buildings. The plan shall include the maximum amount
19 of on-site renewable energy measures possible while retaining
20 the overall revenue-neutral status of the plan, such that the
21 total cost of the plan is covered entirely by the combined
22 energy cost savings of both the renewable energy and other
23 energy efficiency measures undertaken. In addition, the plan
24 shall include a schedule for funding and installing the energy
25 efficiency measures that gives priority to those projects that

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1 will realize significant energy cost savings in the shortest
2 time frame. The department shall develop the plan:

3 (1) for energy efficiency measures in state
4 buildings in conjunction with the property control division of
5 the general services department, the staff architect of the
6 division, the capitol buildings planning commission and other
7 state agencies with control and management over buildings; and

8 (2) for energy efficiency measures in school
9 district buildings, in conjunction with the public education
10 department, the public school capital outlay council and the
11 public school facilities authority.

12 B. The plan shall be followed by each state agency
13 and school district in New Mexico, and those agencies and
14 districts shall cooperate with the department in the
15 development and the implementation of the plan.

16 Section 4. [NEW MATERIAL] CONTRACTS FOR THE INSTALLATION
17 OF ENERGY EFFICIENCY MEASURES.--Pursuant to the Procurement
18 Code, the department shall install or enter into contracts for
19 the installation of energy efficiency measures at one or more
20 of the state buildings and school district buildings identified
21 in the state plan. The installation or contracts shall address
22 provisions concerning payment schedules, monitoring,
23 inspecting, measuring and warranties as are necessary to ensure
24 that the energy efficiency measures will be installed and the
25 energy cost savings realized in the manner most beneficial to

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1 the state; provided that bonds shall not be issued pursuant to
2 the Energy Efficiency and Renewable Energy Bonding Act without
3 a finding by the department that the energy cost savings
4 realized from the energy efficiency measures will be greater
5 than the debt service due on the bonds issued to finance the
6 energy efficiency measures.

7 Section 5. [NEW MATERIAL] ENERGY EFFICIENCY AND RENEWABLE
8 ENERGY BONDING FUND-- PLEDGE OF MONEY IN THE FUND. --

9 A. The "energy efficiency and renewable energy
10 bonding fund" is created as a special fund within the
11 authority. The fund shall be administered by the authority as
12 a special account. The fund shall consist of gross receipts
13 tax revenues distributed to the fund by law, money transferred
14 to the fund pursuant to the provisions of the Energy Efficiency
15 and Renewable Energy Bonding Act and other transfers and
16 appropriations made to the fund. Earnings of the fund shall be
17 credited to the fund. Balances in the fund at the end of any
18 fiscal year shall remain in the fund, except as provided in
19 this section.

20 B. Money in the fund shall be pledged irrevocably
21 by the authority for the payment of principal and interest on
22 all bonds issued pursuant to the Energy Efficiency and
23 Renewable Energy Bonding Act. Money in the fund is
24 appropriated to the authority for the purpose of paying debt
25 service, including redemption premiums, on the bonds and the

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1 expenses incurred in the issuance, payment and administration
2 of the bonds.

3 C. On the last day of January and July of each
4 year, the authority shall estimate the amount needed to make
5 debt service payments on the bonds issued pursuant to the
6 Energy Efficiency and Renewable Energy Bonding Act plus the
7 amount that may be needed for any required reserves,
8 administrative expenses or the obligations coming due during
9 the next twelve months from the fund. The authority shall
10 transfer to the general fund any balance in the fund above the
11 estimated amounts. Amounts transferred to the general fund may
12 be appropriated by the legislature to the department for the
13 purposes of carrying out the provisions of the Energy
14 Efficiency and Renewable Energy Bonding Act.

15 D. Upon payment or defeasance of all principal,
16 interest and other expenses or obligations related to the
17 bonds, the authority shall certify to the public education
18 department, the department of finance and administration and
19 the secretary of taxation and revenue that all obligations for
20 the bonds issued pursuant to the Energy Efficiency and
21 Renewable Energy Bonding Act have been discharged and shall
22 direct that distributions cease to the fund pursuant to that
23 act and the Tax Administration Act.

24 E. The bonds issued pursuant to the Energy
25 Efficiency and Renewable Energy Bonding Act shall be payable

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1 solely from the fund or such other special funds as may be
2 provided by law and do not create an obligation or indebtedness
3 of the state within the meaning of any constitutional
4 provision. A breach of any contractual obligation incurred
5 pursuant to that act shall not impose a pecuniary liability or
6 a charge upon the general credit or taxing power of the state,
7 and the bonds are not general obligations for which the state's
8 full faith and credit is pledged.

9 F. The state does hereby pledge that the fund shall
10 be used only for the purposes specified in this section and
11 pledged first to pay the debt service on the bonds issued
12 pursuant to the Energy Efficiency and Renewable Energy Bonding
13 Act. The state further pledges that any law authorizing the
14 distribution of taxes or other revenues to the fund or
15 authorizing expenditures from the fund shall not be amended or
16 repealed or otherwise modified so as to impair the bonds to
17 which the fund is dedicated as provided in this section.

18 Section 6. [NEW MATERIAL] CALCULATION OF COST SAVINGS--
19 TRANSFERS TO ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING
20 FUND. --

21 A. Upon the installation of energy efficiency
22 measures in a state building or school district building, the
23 department shall calculate the estimated energy cost savings,
24 in the form of lower utility payments by the school district or
25 the state, that will be annually realized as a result of the

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1 installation of the energy efficiency measures. The department
2 shall certify the estimate to the department of finance and
3 administration and the general services department or other
4 state agency with jurisdiction, in the case of state buildings,
5 and to the department of finance and administration, the public
6 education department and the school district, in the case of
7 school district buildings.

8 B. In the case of a school district building, when
9 calculating the state equalization guarantee distribution
10 pursuant to Section 22-8-25 NMSA 1978, the public education
11 department shall deduct ninety percent of the amount certified
12 for the school district by the department.

13 C. Reduction of a school district's state
14 equalization guarantee distribution shall cease when the school
15 district's cumulative reductions equal its proportional share
16 of the cumulative debt service payments necessary to service
17 the bonds issued pursuant to the Energy Efficiency and
18 Renewable Energy Bonding Act.

19 D. Prior to June 30 of each year, the total amount
20 deducted for all school districts pursuant to Subsection B of
21 this section shall be transferred to the fund.

22 E. In the case of a state building, the department
23 of finance and administration shall deduct from the operating
24 budget of the agency responsible for paying the utilities of
25 the state building ninety percent of the amount certified for

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1 the agency by the department.

2 F. Deduction from the operating budget of the
3 agency responsible for paying the utilities of the state
4 building shall cease when the agency's cumulative deductions
5 equal its proportional share of the cumulative debt service
6 payments necessary to service the bonds issued pursuant to the
7 Energy Efficiency and Renewable Energy Bonding Act.

8 G. Prior to June 30 of each year, the total amount
9 deducted for all agencies and all state buildings pursuant to
10 Subsection D of this section shall be transferred from the
11 appropriate funds to the energy efficiency and renewable energy
12 bonding fund.

13 Section 7. [NEW MATERIAL] ENERGY EFFICIENCY BONDS
14 AUTHORIZED-- CONDITIONS-- PROCEDURE. --

15 A. The authority is authorized to issue and sell
16 from time to time revenue bonds, known as "energy efficiency
17 bonds", in an amount outstanding at any one time not to exceed
18 twenty million dollars (\$20,000,000), payable solely from the
19 fund, in compliance with the Energy Efficiency and Renewable
20 Energy Bonding Act and the New Mexico Finance Authority Act for
21 the purpose of installing energy efficiency measures when the
22 department has certified the need for the bonds and the
23 conditions of Subsection C of this section have been satisfied.

24 B. The net proceeds from the bonds are appropriated
25 to the department for the purpose of making payments for the

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1 installation of energy efficiency measures pursuant to the
2 Energy Efficiency and Renewable Energy Bonding Act.

3 C. Bonds shall not be issued pursuant to this
4 section unless:

5 (1) the department has committed to install or
6 has entered into one or more contracts pursuant to Section 4 of
7 the Energy Efficiency and Renewable Energy Bonding Act for the
8 installation of energy efficiency measures and the resulting
9 energy cost savings will be realized within a reasonable time;

10 (2) considering the timeliness and amount of
11 energy cost savings estimated to be realized from the energy
12 efficiency measures, the department has certified the
13 approximate date when the energy cost savings are most likely
14 to equal or exceed the debt service due on the bonds to be
15 issued to fund the energy efficiency measures;

16 (3) the life of energy efficiency measures
17 meets or exceeds the life of the bonds allocable to those
18 energy efficiency measures as determined by the department and
19 the authority; and

20 (4) based on the department's certification,
21 the debt service on the bonds has been structured by the
22 authority to preclude the annual debt service payments due
23 until the date that the cost savings equal or exceed the debt
24 service.

25 D. Each series of bonds shall be issued pursuant to

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1 the provisions of the New Mexico Finance Authority Act, except
2 as otherwise provided in the Energy Efficiency and Renewable
3 Energy Bonding Act.

4 Section 8. [NEW MATERIAL] ENERGY EFFICIENCY AND RENEWABLE
5 ENERGY BONDING ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--
6 BONDS ARE LEGAL INVESTMENTS. --

7 A. The Energy Efficiency and Renewable Energy
8 Bonding Act and the New Mexico Finance Authority Act shall,
9 without reference to any other act of the legislature, be full
10 authority for the issuance and sale of energy efficiency bonds,
11 which bonds shall have all the qualities of investment
12 securities under the Uniform Commercial Code and shall not be
13 invalid for any irregularity or defect or be contestable in the
14 hands of bona fide purchasers or holders thereof for value.

15 B. Energy efficiency bonds are legal investments
16 for any person or board charged with the investment of any
17 public funds and are acceptable as security for any deposit of
18 public money.

19 Section 9. [NEW MATERIAL] BONDS TAX EXEMPT.--All energy
20 efficiency bonds shall be exempt from taxation by the state or
21 any of its political subdivisions.

22 Section 10. [NEW MATERIAL] ANNUAL REPORT REQUIRED.--No
23 later than December 1 of each year, the department shall report
24 to the legislature and to the governor on its activities during
25 the previous fiscal year in administering the provisions of the

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1 Energy Efficiency and Renewable Energy Bonding Act. The report
2 shall include:

3 A. details concerning all payments made for the
4 installation of energy efficiency measures;

5 B. details concerning all expenditures made in
6 administering the provisions of the Energy Efficiency and
7 Renewable Energy Bonding Act;

8 C. a list of all buildings in which energy
9 efficiency measures were installed;

10 D. details showing how the energy cost savings were
11 calculated;

12 E. an analysis of whether the program has been
13 cost-effective;

14 F. a report showing progress made in complying with
15 the state plan developed pursuant to Section 3 of the Energy
16 Efficiency and Renewable Energy Bonding Act and, if in
17 noncompliance, a plan for achieving compliance in the future;

18 G. a summary of activities being conducted during
19 the present fiscal year; and

20 H. any additional information that will assist the
21 legislature and the governor in evaluating the program.

22 Section 11. A new section of the Tax Administration Act
23 is enacted to read:

24 "[NEW MATERIAL] DISTRIBUTION--ENERGY EFFICIENCY AND
25 RENEWABLE ENERGY BONDING FUND--GROSS RECEIPTS TAX.--A

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1 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
2 made to the energy efficiency and renewable energy bonding fund
3 in the amount of two hundred thousand dollars (\$200,000) from
4 the net receipts attributable to the gross receipts tax imposed
5 by the Gross Receipts and Compensating Tax Act. The
6 distribution shall be made:

7 A. after the required distribution pursuant to
8 Section 7-1-6.4 NMSA 1978;

9 B. contemporaneously with other distributions of
10 net receipts attributable to the gross receipts tax for payment
11 of debt service on outstanding bonds or to a fund dedicated for
12 that purpose; and

13 C. prior to any other distribution of net receipts
14 attributable to the gross receipts tax."

15 Section 12. Section 22-8-25 NMSA 1978 (being Laws 1981,
16 Chapter 176, Section 5, as amended) is amended to read:

17 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
18 DEFINITIONS--DETERMINATION OF AMOUNT.--

19 A. The state equalization guarantee distribution is
20 that amount of money distributed to each school district to
21 ensure that the school district's operating revenue, including
22 its local and federal revenues as defined in this section, is
23 at least equal to the school district's program cost.

24 B. "Local revenue", as used in this section, means
25 seventy-five percent of receipts to the school district derived

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1 from that amount produced by a school district property tax
2 applied at the rate of fifty cents (\$.50) to each one thousand
3 dollars (\$1,000) of net taxable value of property allocated to
4 the school district and to the assessed value of products
5 severed and sold in the school district as determined under the
6 Oil and Gas Ad Valorem Production Tax Act and upon the assessed
7 value of equipment in the school district as determined under
8 the Oil and Gas Production Equipment Ad Valorem Tax Act. The
9 school district shall budget and expend twenty percent of the
10 total revenue receipts for capital outlay.

11 C. "Federal revenue", as used in this section,
12 means receipts to the school district, excluding amounts that,
13 if taken into account in the computation of the state
14 equalization guarantee distribution, result, under federal law
15 or regulations, in a reduction in or elimination of federal
16 school funding otherwise receivable by the school district,
17 derived from the following:

18 (1) seventy-five percent of the school
19 district's share of forest reserve funds distributed in
20 accordance with Section 22-8-33 NMSA 1978. The school district
21 shall budget and expend twenty percent of the total forest
22 reserve receipts for capital outlay; and

23 (2) seventy-five percent of grants from the
24 federal government as assistance to those areas affected by
25 federal activity authorized in accordance with Title 20 of the

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1 United States Code, commonly known as "PL 874 funds" or "impact
2 aid". The school district shall budget and expend twenty
3 percent of the grant receipts for capital outlay.

4 D. To determine the amount of the state
5 equalization guarantee distribution, the ~~[state superintendent]~~
6 secretary of public education shall:

7 (1) calculate the number of program units to
8 which each school district is entitled using an average of the
9 MEM on the fortieth, eightieth and one hundred twentieth days
10 of the prior year; or

11 (2) calculate the number of program units to
12 which a school district operating under an approved year-round
13 school calendar is entitled using an average of the MEM on
14 appropriate dates established by the state board; or

15 (3) calculate the number of program units to
16 which a school district with a MEM of two hundred or less is
17 entitled by using an average of the MEM on the fortieth,
18 eightieth and one hundred twentieth days of the prior year or
19 the fortieth day of the current year, whichever is greater; and

20 (4) using the results of the calculations in
21 Paragraph (1), (2) or (3) of this subsection and the
22 instructional staff training and experience index from the
23 October report of the prior school year, establish a total
24 program cost of the school district;

25 (5) calculate the local and federal revenues

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1 as defined in this section;

2 (6) deduct the sum of the calculations made in
3 Paragraph (5) of this subsection from the program cost
4 established in Paragraph (4) of this subsection; ~~[and]~~

5 (7) deduct the total amount of guaranteed
6 energy savings contract payments that the ~~[state~~
7 ~~superintendent]~~ secretary of public education determines will
8 be made to the school district from the public school utility
9 conservation fund during the fiscal year for which the state
10 equalization guarantee distribution is being computed; and

11 (8) deduct ninety percent of the amount
12 certified for the school district by the department pursuant to
13 the Energy Efficiency and Renewable Energy Bonding Act.

14 E. Reduction of a school district's state
15 equalization guarantee distribution shall cease when the school
16 district's cumulative reductions equal its proportional share
17 of the cumulative debt service payments necessary to service
18 the bonds issued pursuant to the Energy Efficiency and
19 Renewable Energy Bonding Act.

20 ~~[E.]~~ F. The amount of the state equalization
21 guarantee distribution to which a school district is entitled
22 is the balance remaining after the deductions made in
23 Paragraphs (6), ~~[and]~~ (7) and (8) of Subsection D of this
24 section.

25 ~~[F.]~~ G. The state equalization guarantee

1 distribution shall be distributed prior to June 30 of each
2 fiscal year. The calculation shall be based on the local and
3 federal revenues specified in this section received from June 1
4 of the previous fiscal year through May 31 of the fiscal year
5 for which the state equalization guarantee distribution is
6 being computed. In the event that a school district has
7 received more state equalization guarantee funds than its
8 entitlement, a refund shall be made by the school district to
9 the state general fund. "

10 Section 13. EFFECTIVE DATE. --The effective date of the
11 provisions of this act is July 1, 2005.

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